

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

11/07/2002

CLERK OF THE COURT
FORM L000

HONORABLE MICHAEL D. JONES

P. M. Espinoza
Deputy

LC 2002-000334

FILED: _____

STATE OF ARIZONA

CARRIE M COLE

v.

MYLES BARON BARCHAS

MYLES BARON BARCHAS
4400 N SCOTTSDALE RD
STE 9-527
SCOTTSDALE AZ 85251

REMAND DESK CR-CCC
SCOTTSDALE CITY COURT

MINUTE ENTRY

SCOTTSDALE CITY COURT

Cit. No. #1511989

Charge: 1. FAILURE TO WEAR SEATBELT
2. IMPROPER POSITION/RIGHT TURN

DOB: 05/19/64

DOC: 02/10/02

This Court has jurisdiction of this appeal pursuant to the Arizona Constitution Article VI, Section 16, and A.R.S. Section 12-124(A).

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

11/07/2002

CLERK OF THE COURT
FORM L000

HONORABLE MICHAEL D. JONES

P. M. Espinoza
Deputy

LC 2002-000334

This case has been under advisement without oral argument and the Court has considered and reviewed the record of the proceedings from the Scottsdale City Court, the exhibits made of record, and the Memoranda submitted by the parties.

Appellant was charged on February 10, 2002 within the City of Scottsdale with two civil traffic violations: (1) Failure to Wear a Seatbelt, in violation of A.R.S. Section 28-909(A)(1); (2) Improper Right Turn in violation of A.R.S. Section 28-751.1.

The first issue raised by Appellant is that he was denied his constitutional right to a jury trial in this case. There are no reported cases in Arizona dealing with the issue of the right to a jury trial to persons charged with failing to wear a seatbelt or an improper right turn.

The Federal law is not helpful in regard to this issue. The United States Constitution requires that if a crime is punishable by more than six (6) months of incarceration, it is not a petty offense and the accused must be afforded the right to a jury trial.¹ Arizona has in fact, extended the right of a jury trial much further than that guaranteed by the United State Constitution.² The Arizona Supreme Court in McDougall³, listed four factors to evaluate in determining the right to a jury trial in the State of Arizona. The first three factors are found in Rothweiler v. Superior Court⁴:

1. The length of possible incarceration;
2. The moral quality of the act charges (sometimes referred to as the "moral turpitude" issue;
3. Its relationship to common law crimes.

¹ Lewis v. United States, 518 U.S. 322, 116 S.Ct. 2163, 135, L.Ed.2d 590 (1996); Blanton v. North Las Vegas, 489 U.S. 538, 109 S.Ct. 1289, 103 L.Ed.2d 550 (1989).

² State v. ex rel. McDougall v. Strohson, 190 Ariz. 120, 945 P.2d 1251 (1997).

³ Id.

⁴ 100 Ariz. 137, 410 P.2d 479 (1996).

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

11/07/2002

CLERK OF THE COURT
FORM L000

HONORABLE MICHAEL D. JONES

P. M. Espinoza
Deputy

LC 2002-000334

The fourth consideration comes from State ex rel. Dean v. Dolny⁵ and requires that the Court evaluate whether additional serious or grave consequences might flow from the conviction.

There is no possible incarceration in this case resulting from a finding of responsibility for a civil traffic matter. It is not possible for Appellant to be incarcerated. An evaluation of the moral quality of the acts charged make it clear that Appellant was not charged with any crime. Nor, was Appellant charged with any act involving dishonesty, fraud, or any crime involving a deficient moral character. This Court concludes the charges against Appellant were not of such a moral quality that a jury trial would be required.

This Court also finds that the crimes charged have no relation to common-law crimes. And, there are no additional or unusually serious or grave consequences that result from a finding of responsibility for the traffic offenses that Appellant was charged, that would entitle Appellant to a jury trial.

This Court concludes that the trial judge did not err in denying Appellant's request for a jury trial. Appellant is not entitled to a jury trial for these civil traffic violations.

Appellant also contends that the Scottsdale City judge was "biased, arrogant, impatient, had a conflict of interest, and violated procedures designed allowed to a fair hearing...".⁶ The record does not support Appellant's contentions.

This Court finds no violation of the Canon of Judicial Conduct, but does find that the trial judge acted appropriately and courteously while dealing with the Appellant. Appellant's conclusion that the trial judge was biased and had a conflict of interest is clearly based upon the fact the Appellant was found

⁵ 161 Ariz. 297, 778 P.2d 1193 (1989).

⁶ Appellant's Memorandum at page 1.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

11/07/2002

CLERK OF THE COURT
FORM L000

HONORABLE MICHAEL D. JONES

P. M. Espinoza
Deputy

LC 2002-000334

responsible, as no other information within the record supports such a conclusion.

The remaining issue raised by the Appellant consists of a diatribe, not supported by the record, against the police officer who testified against Appellant. This Court will construe this argument as a challenge to the sufficiency of the evidence. When reviewing the sufficiency of the evidence, an appellate court must not re-weigh the evidence to determine if it would reach the same conclusion as the original trier of fact.⁷ All evidence will be viewed in a light most favorable to sustaining a conviction and all reasonable inferences will be resolved against the Defendant.⁸ If conflicts in evidence exists, the appellate court must resolve such conflicts in favor of sustaining the verdict and against the Defendant.⁹ An appellate court shall afford great weight to the trial court's assessment of witnesses' credibility and should not reverse the trial court's weighing of evidence absent clear error.¹⁰ When the sufficiency of evidence to support a judgment is questioned on appeal, an appellate court will examine the record only to determine whether substantial evidence exists to support the action of the lower court.¹¹ The Arizona Supreme Court has explained in State v. Tison¹² that "substantial evidence" means:

⁷ State v. Guerra, 161 Ariz. 289, 778 P.2d 1185 (1989); State v. Mincey, 141 Ariz. 425, 687 P.2d 1180, cert.denied, 469 U.S. 1040, 105 S.Ct. 521, 83 L.Ed.2d 409 (1984); State v. Brown, 125 Ariz. 160, 608 P.2d 299 (1980); Hollis v. Industrial Commission, 94 Ariz. 113, 382 P.2d 226 (1963).

⁸ State v. Guerra, supra; State v. Tison, 129 Ariz. 546, 633 P.2d 355 (1981), cert.denied, 459 U.S. 882, 103 S.Ct. 180, 74 L.Ed.2d 147 (1982).

⁹ State v. Guerra, supra; State v. Girdler, 138 Ariz. 482, 675 P.2d 1301 (1983), cert.denied, 467 U.S. 1244, 104 S.Ct. 3519, 82 L.Ed.2d 826 (1984).

¹⁰ In re: Estate of Shumway, 197 Ariz. 57, 3 P.3rd 977, review granted in part, opinion vacated in part 9 P.3rd 1062; Ryder v. Leach, 3 Ariz. 129, 77P. 490 (1889).

¹¹ Hutcherson v. City of Phoenix, 192 Ariz. 51, 961 P.2d 449 (1998); State v. Guerra, supra; State ex rel. Herman v. Schaffer, 110 Ariz. 91, 515 P.2d 593 (1973).

¹² SUPRA.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

11/07/2002

CLERK OF THE COURT
FORM L000

HONORABLE MICHAEL D. JONES

P. M. Espinoza
Deputy

LC 2002-000334

More than a scintilla and is such proof as a reasonable mind would employ to support the conclusion reached. It is of a character which would convince an unprejudiced thinking mind of the truth of the fact to which the evidence is directed. If reasonable men may fairly differ as to whether certain evidence establishes a fact in issue, then such evidence must be considered as substantial.¹³

This Court finds that the trial court's determination was not clearly erroneous and was supported by substantial evidence.

IT IS ORDERED affirming the judgments of responsibility and sanctions imposed.

IT IS FURTHER ORDERED remanding this matter back to the Scottsdale City Court for all further and future proceedings.

¹³ Id. At 553, 633 P.2d at 362.
Docket Code 512